



DEPARTMENT OF DEFENSE
OFFICE OF THE APPOINTING AUTHORITY
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APPOINTING AUTHORITY FOR
MILITARY COMMISSIONS

JUN 30 2005

MEMORANDUM FOR CHIEF CLERK, OFFICE OF MILITARY
COMMISSIONS

SUBJECT: Duties and Responsibilities of Chief Clerk of Military
Commissions

- References:
- (a) Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," 66 F.R. 57833 (Nov. 16, 2001)
 - (b) Department of Defense Directive 5105.70, "Appointing Authority for Military Commissions" (Feb. 10, 2004)
 - (c) Military Commission Order No. 1 (Mar. 21, 2002)
 - (d) Military Commission Instruction No. 8 (Aug. 31, 2004)
 - (e) Military Commission Instruction No. 9 (Dec. 26, 2003)
 - (f) Appointing Authority Regulation No. 2 (Nov. 17, 2004)
 - (g) Presiding Officer Memorandum 2-1 (July 19, 2004)
 - (h) Presiding Officer Memorandum 4-2 (Aug. 12, 2004)
 - (i) Presiding Officer Memorandum 13 (Nov. 22, 2004)

This memorandum describes the responsibilities of the Chief Clerk of Military Commissions (CCMC) at the trial level. The CCMC is responsible for: (1) acting as the custodian of records of trial for military commissions; (2) releasing properly redacted transcripts and exhibits for posting on the Department of Defense Public Affairs (DoD PA) Web site; (3) ensuring adequate preparation of the trial transcript, and that the record of trial is complete; (4) ensuring the professional appearance of the hearing room's interior; (5) designating spectator seating at the commission hearing (see

reference (b), para. 4.1.8); (6) providing translator and security classification services for commission sessions; (7) arranging for handling and storage of all classified documents on behalf of Presiding Officers; (8) sending administrative instructions from Presiding Officers to commission members as required; (9) issuing promulgating orders describing the results of trials; and (10) providing other necessary administrative support to Presiding Officers and/or commissions as directed by the Appointing Authority. The CCMC has discretion to delegate responsibilities to the Deputy CCMC. The first three items require additional explanation.

Custodian of records of trial. The CCMC will store original documents, tape recordings of proceedings and transcripts. The CCMC will create such copies as are necessary. Exhibits will not be removed from the hearing room without the permission of the Presiding Officer, and will be stored at the site where the military commission is meeting until the trial is completed. After the trial is terminated, the original documents will be moved to the Office of the CCMC at the letterhead address.

Releasing transcripts and copies of exhibits for posting on the DoD PA Web site.

(a) **Generally.** Reference (b), para. 4.1.7 and reference (c), para. 6(B)(3), require that military commission proceedings be open to the maximum extent practicable, and reference (b), para. 4.1.8 mandates “the public release of transcripts.” Reference (c), para. 6(B)(3) authorizes public release of transcripts of open proceedings at the “appropriate time.” The CCMC may act on behalf of the Appointing Authority in the release of transcripts and exhibits for posting on the DoD PA Web site. The CCMC will delay release of information when it will adversely affect the fairness of the proceeding. Sensitive information adversely affecting for example, personal privacy or national security, must be redacted from transcripts and exhibits prior to Web-posting. Information that the Presiding Officer orders protected under reference (c), para. 6(D)(2)(d) and 6(D)(5) will not be released to the public.

(b) **Release of unauthenticated transcripts.** Court reporters will electronically provide unauthenticated transcripts as well as tape recordings of the sessions to the CCMC as soon as practicable (ASAP). The CCMC will provide redacted, unauthenticated transcripts to the parties along with the reason(s) the CCMC redacted information from the unauthenticated transcripts ASAP. The parties will review the unauthenticated transcript, not for completeness or accuracy, but for redaction of sensitive information purposes. If additional redactions are necessary, the parties will provide such redactions

along with their reasons to the CCMC within 24 hours of receipt, or such time as the CCMC shall designate, whichever is later. Failure to meet the deadline established by the CCMC shall constitute waiver of the right to request additional redactions. The CCMC will make other redactions or changes as necessary and provide the redacted documents to the DoD PA for Web-posting. The parties will not further release redacted or unredacted, unauthenticated transcripts, but may direct requests for information to the DoD PA Web site. The DoD PA Website will prominently display the following disclosure:

The following document is an UNOFFICIAL transcript of a military commission proceeding. The Presiding Officer has not reviewed it, and it may contain spelling, grammar, translation, and/or other errors. Do NOT consider it the official Record of Trial or rely on it for accuracy. Its sole purpose is to disseminate general information. The authenticated transcript of this hearing will be released at this web site after careful comparison with the tape recordings from the proceeding.

(c) **Release of authenticated session transcripts.** The CCMC will provide redacted, authenticated session transcripts to the parties along with the reason(s) the CCMC redacted information from these transcripts ASAP. The parties will review these session transcripts, to ensure redaction of sensitive or protected information. If additional redactions are necessary, the parties will provide such redactions along with their reasons to the CCMC within ten calendar days of receipt. The CCMC will make other redactions or changes as necessary and provide the redacted documents to the DoD PA for Web-posting. The DoD PA Website will prominently display the following disclosure:

The following document is an OFFICIAL, authenticated session transcript of a military commission record of trial. A description of the matters deleted, and the reasons for such deletions, are attached after the authentication page, which is the last page of the transcript.

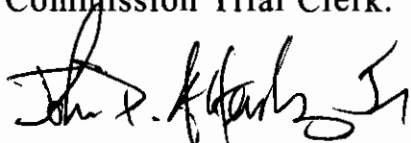
(d) **Release of copies of exhibits.** The process for motions filing is described in references (f) and (h). Commission Trial Clerk will provide electronic copies of motions, including attachments if any, to the CCMC ASAP. The CCMC will then redact necessary information and then provide the redacted documents to the parties along with the reason(s) the information was redacted. The parties will review the redacted documents and provide additional redactions or comments if any to the opposing party and to the CCMC. The parties may file additional comments to the same

addressees thereafter as they deem appropriate. The CCMC will make other redactions or changes as necessary and provide the redacted documents to the DoD PA for Web-posting after the Presiding Officer cites them at the hearing as a particular review exhibit.

Authenticating records of trial. Consistent with reference (c), para. 6(H)(1), and reference (i), Presiding Officers, court reporters, prosecutors and defense counsel will ensure that session transcripts are authenticated as rapidly as practicable after each trial session. Presiding Officers will transmit the authenticated sessions to the CCMC ASAP.

Relationship of CCMC with Presiding Officers. The CCMC will report to and work under the supervision of Staff Director, Office of Operations and Support, Office of the Appointing Authority for Military Commissions. The CCMC will not provide advice to Presiding Officers on procedures or other legal matters, but may discuss release of information to DoD PA, coordinate preparation of the record of trial, and discuss resolution of other issues directly related to the responsibilities in paragraph 1 of this memorandum. Until session transcripts are authenticated and delivered to the CCMC, control of, and authority to release, audio files or tape recordings pertaining to those sessions resides with the Presiding Officer even if the CCMC has physical custody of these items. A copy of audio files or tape recordings will be retained at the Office of the Appointing Authority until the session transcripts are authenticated. Requests for access to, or copies of, audio files or tape recordings prior to authentication of session transcripts will be initially directed to the Presiding Officer.

Relationship of CCMC with Commission Trial Clerk. The duties of the CCMC referred to Appointing Authority Regulation No. 2, para. 3 (17 Nov. 2004) are assumed by the Commission Trial Clerk.



John D. Altenburg, Jr.
Appointing Authority
for Military Commissions

CC
Chief Prosecutor (COL Swann)
Chief Defense Counsel (COL Gunn)
Presiding Officer (COL Brownback)
Commission Trial Clerk (Mr. Hodges)
DoD Public Affairs Officer (Major Shavers)